

**REPORT
ON
TESTING FOR AIDS**

ONTARIO LAW REFORM COMMISSION

EXECUTIVE SUMMARY



The Ontario Law Reform Commission was established by the Ontario Government in 1964 as an independent legal research institute. It was the first Law Reform Commission to be created in the Commonwealth. It recommends reform in statute law, common law, jurisprudence, judicial and quasi-judicial procedures, and in issues dealing with the administration of justice in Ontario.

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In its *Report on Testing for AIDS*, the Ontario Law Reform Commission recommends that any HIV-related test be performed only with an individual's voluntary, specific, and informed consent. HIV-related tests are different from most standard blood tests because of the personal, social, and financial consequences of being identified as HIV-infected. In the absence of an effective treatment, and in the presence of a stigmatizing social understanding of AIDS and HIV infection, the most successful efforts to reduce the spread of infection should focus upon the public health strategy of encouraging individuals at risk to determine their serological status voluntarily, and to engage in risk-reducing behaviour. In the Commission's view, targeted public health education campaigns and programs, coupled with wide availability of voluntary HIV antibody testing, are the most effective means currently available to reduce HIV transmission. The Commission therefore opposes mandatory HIV-related testing programs, other than in relation to the use of blood or tissue donations or anonymous screening for research or epidemiological purposes.

The Commission believes that stringent confidentiality protection for all HIV-related information is essential not only to prevent the serious consequences that can arise from unwarranted disclosure, but also to encourage people at risk to come forward and to determine their HIV status voluntarily. Protection of information pertaining to HIV-related testing and treatment promotes society's interest in individual privacy and the public health without impairing the community's right to be protected from the spread of disease. Accordingly, the Commission recommends that individuals should be able to test for HIV infection without being personally identified. Significant non-identifying medical and demographic information should continue to be reported to public health authorities.

The Commission views a well-functioning, voluntary, physician-centred partner notification scheme as an important part of sound HIV public health policy. The Commission proposes the implementation of a physician-centred program of partner notification, that would encourage patients to cooperate with their personal physicians in notifying partners. Under precisely defined guidelines, doctors should be able to notify identifiable, unsuspecting partners of HIV-infected patients who are at significant risk of infection. The Commission further proposes that both doctors and patients be given the option to seek the assistance of public health authorities in the notification process and that doctors who do notify partners should be protected against the potential for liability resulting from such responsibilities.

Finally, to ensure that HIV-related issues are dealt with in the most comprehensive manner possible, the Commission recommends the enactment of legislation, preferably an HIV-specific statute, to govern all substantive rules respecting HIV-related testing and the confidentiality of HIV-related information.

SUMMARY OF RECOMMENDATIONS

The Commission makes the following recommendations:

1. No HIV-related test should be performed without first receiving the voluntary, specific, and informed consent of the patient, except where an HIV-related test is performed
 - (a) in relation to the use of blood, organs, tissue, or body parts in medical research, treatment, or transplantation; or
 - (b) as part of an anonymous HIV screening program for epidemiological or research purposes.
2. Any patient seeking an HIV-related test should be provided with the opportunity to test non-nominally or to remain anonymous and to provide voluntary, specific, and informed consent through the use of a coded system with no linking of the patient's identity to test results.
3. The following principles should govern partner notification:
 - (a) patients should be encouraged to notify partners voluntarily, or to cooperate with their personal physician's attempt to do so, within a physician-centred program of partner notification;
 - (b) physicians should be able to directly notify identifiable, unsuspecting partners of HIV-infected patients who are at risk, under clearly defined guidelines governing the disclosure of HIV-related information;
 - (c) the option to seek the assistance of public health authorities in the notification process should be available to both physicians and patients;
 - (d) physicians who notify partners should be protected against the potential for liability resulting from responsibilities relating to partner notification.

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